

Message Text

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SUBJECT: CJIC MEETING JUNE 29: OFFICIAL DUTY CONCEPT AND
LARNER-HOLLAND AND LARNER-DILLON SHOOTING CASES

REF: CINCPACREPPHIL 291030Z JUN 73

BEGIN SUMMARY: US ACTIONS AND EXPLANATIONS HAVE APPAR-
ENTLY MUTED GOP REACTION TO SHOOTINGS. GOP CJIC REPS
VERY GRATIFIED OVER STRAIGHTFORWARD US ATTITUDE IN
LARNER-DILLON CASE.

1. REFERENCE MESSAGE SUMMARIZED US-RP CRIMINAL JURIS-
DICTION IMPLEMENTATION COMMITTEE MEETING. HOWEVER,
ADDITIONAL REPORTING ON TONE OF MEETING MAY BE USEFUL
TO ADDRESSEES.

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2. ATMOSPHERE AS NOTED WAS CORDIAL. NEVERTHELES,
CHIEF STATE PROSECUTOR RP CO-CHAIRMAN NOCON ADDRESSED
QUESTIONS SET FORTH IN DFA NOTE ON OFFICIAL DUTY
(MANILA 010350 MAY 73) IN AN EXTREMELY SERIOUS AND

COOL MANNER AND THOUGH HIS QUESTIONING WAS COURTEOUS HE WAS DISTINCTLY ACTING IN HIS ROLE AS CHIEF STATE PROSECUTOR. BASIC THRUST OF QUESTIONING REVEALED GOP PREOCCUPATION WITH POSSIBILITY USG ISSUES DUTY CERTIFICATES AS MEANS OF SHIELDING SERVICEMEN FROM CONSEQUENCES THEIR ACTIONS. US PANEL REJOINED STRONGLY THAT DUTY CERTIFICATE WAS MERELY AN ASSERTION OF JURISDICTION OVER THE GENERAL CATEGORY OF "OFFICIAL DUTY " WHICH US-RP CRIMINAL JURISDICTION ARRANGEMENT HAD SPECIFICALLY SET ASIDE FOR US EXERCISE OF JURISDICTION. WE POINTED ALSO TO FACT THAT US HAD SIMILAR OFFICIAL DUTY ARRANGEMENTS THROUGHOUT THE WORLD WHERE WE MAICERTIFICATES ARE ONLY ISSUED WHEN A GIVEN ACT OF A PERSON ON OFFICIAL DUTY HAS BEEN CALLED INTO QUESTION BY THE FILING OF CRIMINAL CHARGES OR SOME SIMILAR EVENT AND THEN ONLY AFTER THE US MILITARY AUTHORITIES HAD INVESTIGATED AND DETERMINED THAT THE ACT IN QUESTION AROSE FROM THE PERFORMANCE OF HIS DUTY. IN THIS CONNECTION, WE STRESSED THAT THE US MONITORS THE CONDUCT OF ITS MILITARY PERSONNEL RIGOROUSLY TO MAKE CERTAIN THAT MILITARY RULES AND REGULATIONS ARE BEING FOLLOWED. IN CASES WHERE THERE HAS BEEN A FAILURE TO FOLLOW SUCH REGULATIONS AND RULES, SERVICEMEN ARE SUBJECT TO MILITARY DISCIPLINE. IT WAS NOTED THAT EVEN IN A THEORETICAL CASE WHERE CERTAIN ACTS OF A SERVICEMAN MIGHT FALL OUTSIDE OF THE PERFORMANCE OF OFFICIAL DUTY, AS DEFINED IN US-RP AGREEMENT, THE USG WOULD NORMALLY ASK THE GOP TO WAIVE ITS JURISDICTION SO THAT SUCH A SERVICEMAN COULD BE HANDLED AND PUNISHED IF NECESSARY WITHIN THE US MILITARY JUSTICE SYSTEM IN ORDER THAT DISCIPLINE COULD BE MAINTAINED AND STRENGTHENED.

2. NOCON THEN TURNED TO USE OF DEADLY FORCE AND STATED THAT IT APPEARED TO GOP THAT US SENTRIES TENDED TO SHOOT TRESPASSERS. OPPORTUNITY WAS TAKEN TO BRIEF NOCON ON SUBIC SECURITY SITUATION AND FACT THAT PENALTIES IMPOSED BY OLONGAPO COURTS ARE NOT ADEQUATE TO RESTRAIN TRESLIMITED OFFICIAL USE
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PASSERS. NOCON WAS HANDED TEN-PAGE LISTING OF INCIDENTS INVOLVING ILLEGAL TRESPASS BETWEEN JANUARY AND APRIL 1973. HE WAS VISIBLY IMPRESSED WITH EXTENT OF TRESPASS PROBLEM AND EXPRESSED GRATITUDE FOR LIST WHICH HE LATER SAID HE WOULD MAKE A PART OF HIS REPORT TO SECRETARY OF JUSTICE.

4. FOREGOING DISCUSSION WAS IN CONTEXT OF HOLLAND-LARNER CASE, IN WHICH, AS SUBIC NOTED, COMPLAINANT HAS FILED AFFIDAVIT OF DESISTANCE. WHEN DILLON-LARNER CASE OF ALLEGED ALCANTARA SHOOTING CAME UP ON AGENDA, PHILS TENSED NOTICEABLE; HOWEVER, WHEN THEY WERE TOLD THAT US DID NOT PRESENTLY INTEND FILE DUTY CERTIFICATE IN CASE,

ALTHOUGH A REQUEST FOR WAIVER WOULD BE FILED, NOCON AND FISCAL BADURIA OF OLONGAPO SEEMED STUNNED. MEETING ENDED SHORTLY THEREAFTER.

4. COMMENT: AFTER MEETING NOCON AND BADURIA TOLD US CHAIRMAN THAT THEY HAD DREADED POSSIBILITY OF LEGAL AND POLITICAL CONFRONTATION WITH USG OVER LARNER-DILLON CASE SIMILAR TO 1969 MOOMEY CASE OF 1968 SMITH CASE AND PRAISED US ACTION IN NOT ISSUING DUTY CERTIFICATE IN THIS CASE AS EVIDENCE OF US "SINCERITY" IN IMPLEMENTING CRIMINAL JURISDICTION ARRANGEMENTS. NOCON SAID HE WAS HIGHLY GRATIFIED AT CAPABILITY OF CRIMINAL JURISDICTION IMPLEMENTATION COMMITTEE TO DEAL AMICABLY AND RATIONALLY WITH PROBLEM AS POTENTIALLY EXPLOSIVE AS LARNER-DILLON CASE. NOCOM EXPRESSED PARTICULAR APPRECIATION OVER COOPERATION OF SUBIC AUTHORITIES WITH GOP AUTHORITIES IN INVESTIGATION OF CASE.

5. US ACTIONS TO MUTE GOP REACTION TO LARNER-DILLON CASE APPEAR TO HAVE BEEN EFFECTIVE. NEVERTHELESS, RESTRAINT TO DATE WHICH GOP HAS EXERCISED WITH REGARD TO PRESS EXPLOITATION OF CASE CANNOT BE ASSURED. IN EVENT, HOWEVER, THAT ELEMENTS WITHIN GOP EVENTUALLY SEEK TO MAKE POLITICAL CAPITAL OF LARNER-DILLON CASE, US HAS ESTABLISHED STRONGLY DEFENSIBLE POSITION.

6. MINUTES OF JUNE 29 MEETING WILL BE COMPILED AND SENT BY AIRGRAM TO ADDRESSEES. NEXT CJIC MEETING LIMITED OFFICIAL USE
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SCHEDULED FOR MID-SEPTEMBER AT CLARK.

7. EMBASSY GRATEFUL FOR QUICK ACTION BY WASHINGTON ADDRESSEES IN PROVIDING INSTRUCTIONS ON LARNER-DILLON CASE PRIOR TO JUNE 29 MEETING.
HAMILTON

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